

Message Text

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PAGE 01 STATE 225804

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ORIGIN L-03

INFO OCT-01 AF-08 ISO-00 PM-04 DODE-00 CIAE-00 INR-07

NSAE-00 SS-15 SP-02 TRSE-00 OPR-02 /042 R

DRAFTED BY L/T:WMMCQUADE:EEC

APPROVED BY L/T:AWROVINE

L/M - MR. SHAMWELL

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PM - MR. KIMBALL

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R 131550Z SEP 76

FM SECSTATE WASHDC

TO AMCONSUL ASMARA

INFO AMEMBASSY ADDIS ABABA

UNCLAS STATE 225804

E.O. 11652: N/A

TAGS: MAR, ET

SUBJECT: REQUEST FOR INTERPRETATION OF 1953 AGREEMENT
(DEFENSE INSTALLATIONS)

REF: ASMARA 662

1. REFTEL REQUEST LEGAL INTERPRETATION REGARDING MEANING OF ARTICLE XVIII, PARA 1 OF 1953 US-ETHIOPIA AGREEMENT ON UTILIZATION OF DEFENSE INSTALLATIONS WITHIN EMPIRE OF ETHIOPIA (5 UST 749, TIAS 2964). REFTEL INDICATES PURPOSE OF INQUIRY IS TO DETERMINE IF ETHIOPIAN FIRM MAY DERIVE INCOME TAX BENEFIT FROM HAVING HAD CONTRACT WITH USG FOR PACKING AND FORWARDING OF HOUSEHOLD EFFECTS OF PERSONNEL STATION AT KAGNEW.

2. ENTIRE TEXT OF PARA 1 QUOTED IN PART IN REFTEL
FOLLOWS:

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PAGE 02 STATE 225804

"1. THE IMPERIAL ETHIOPIAN GOVERNMENT GRANTS TO THE GOV-

ERNMENT OF THE UNITED STATES AND ITS CONTRACTORS EXEMPTION FROM THE CUSTOMS LAWS AND REGULATIONS OF ETHIOPIA, INCLUDING THOSE RELATING TO INSPECTION AND SEIZURE, AND FROM CUSTOMS DUTIES, TAXES OR ANY OTHER CHARGES IMPOSED ON MATERIALS, EQUIPMENT, GOODS AND SUPPLIES BROUGHT INTO, PROCURED IN, OR TAKEN OUT OF ETHIOPIA AND USED IN THE CONSTRUCTION, MAINTENANCE, SUPPORT OR OPERATION OF THE INSTALLATIONS. A SIMILAR EXEMPTION IS GRANTED TO MEMBERS OF THE UNITED STATES FORCES ON PERSONAL EFFECTS, INCLUDING HOUSEHOLD GOODS, PRIVATELY-OWNED AUTOMOBILES AND FURNITURE BROUGHT INTO OR TAKEN OUT OF ETHIOPIA BY SUCH MEMBERS FOR THEIR PERSONAL USE. SUCH PROPERTY INTRODUCED INTO ETHIOPIA SHALL NOT BE DISPOSED OF TO OTHER THAN MEMBERS OF THE UNITED STATES FORCES EXCEPT AFTER PAYMENT OF CUSTOMS DUTIES AND CHARGES. THE GOVERNMENT OF THE UNITED STATES WILL COOPERATE WITH THE IMPERIAL ETHIOPIAN GOVERNMENT TO PREVENT OR CORRECT ANY ABUSE OF THE EXEMPTIONS GRANTED HEREIN AND TO THIS END WILL TAKE APPROPRIATE ACTION ON THE BASIS OF INFORMATION AVAILABLE TO IT OR PROVIDED BY THE IMPERIAL ETHIOPIAN GOVERNMENT. IN PARTICULAR, THE GOVERNMENT OF THE UNITED STATES WILL ADOPT, IN AGREEMENT WITH THE IMPERIAL ETHIOPIAN GOVERNMENT, MEASURES TO PREVENT BLACK MARKET OPERATIONS."

AS CAN BE SEEN, THIS PARA GRANTS EXEMPTION FROM "CUSTOMS LAWS AND REGULATIONS ... AND FROM CUSTOMS DUTIES, TAXES OR ANY CHARGES IMPOSED ON MATERIALS" ETC. INsofar AS THIS PARA PERTAINS TO "ITS (USG'S) CONTRACTORS", IT DOES SO ONLY WITH RESPECT TO THE TAKING OF SPECIFIED ITEMS, RPT ITEMS, IN OR OUT OF ETHIOPIA IN SUPPORT OF THE INSTALLATIONS. THIS PARA DOES NOT ADDRESS EXEMPTION FROM INCOME TAXATION. THE REF TO ABUSES AND BLACK MARKET MAKE CLEAR THE INTENT OF THIS PARA.

3. PARAS 2 AND 3 OF ARTICLE XVIII DO PROVIDE FOR EXEMPTION, INTER ALIA, FROM ETHIOPIAN INCOME TAXES. HOWEVER, THESE PARAS SPECIFICALLY LIMIT THE EXEMPTIONS TO A) MEMBERS OF U.S. FORCES, B) NATIONALS OF THE U.S. ORDINARILY RESIDENT IN THE U.S., AND C) CORPORATIONS ORGANIZED UNDER THE VARIOUS LAWS OF THE U.S.

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UNCLASSIFIED

PAGE 03 STATE 225804

4. IT WOULD NOT APPEAR, THEREFORE, THAT IT WOULD BE POSSIBLE TO INTERPRET PARA 1 OR ANY OTHER PART OF ARTICLE XVIII AS PROVIDING AN INCOME TAX ADVANTAGE TO AN ETHIOPIAN CORPORATION BASED ON ITS HAVING PERFORMED CONTRACTUAL SERVICES FOR THE USG.

5. IF THERE ARE ADDITIONAL FACTS, NOT PRESENTED REFTL,

WHICH APPEAR TO HAVE BEARING ON THIS OPINION, PLEASE
FORWARD THEM FOR FURTHER ANALYSIS. ROBINSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY AGREEMENTS, MILITARY BASES, TRACKING STATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE225804
Document Source: CORE
Document Unique ID: 00
Drafter: WMMCQUADE:EEC
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760345-0626
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760966/aaaacehs.tel
Line Count: 117
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 ASMARA 662
Review Action: RELEASED, APPROVED
Review Authority: vandyklc
Review Comment: n/a
Review Content Flags:
Review Date: 06 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06 MAY 2004 by MaustMC>; APPROVED <18 AUG 2004 by vandyklc>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: REQUEST FOR INTERPRETATION OF 1953 AGREEMENT (DEFENSE INSTALLATIONS)
TAGS: MARR, ET, US
To: ASMARA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006